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09/531,821	03/21/2000	Eli Levy	MERCURY.054A	7283

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EXAMINER

NGUYEN, QUANG N

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 12/20/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/531,821

Applicant(s)

LEVY, ELI

Examiner

Quang N. Nguyen

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2000 and 21 August 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                             | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4,6,8</u> . | 6) <input type="checkbox"/> Other: _____                                    |

***Detail Action***

1. Claims 1-36 are presented for examination.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 5,812,780), herein after referred as Chen, in view of Boss et al. (US 6,157,618), herein after referred as Boss.

4. As to claim 1, Chen teaches a method and system for assessing the performance of a server application comprising:

- At a monitoring location, generating first and second request messages that represent requests from users of the server system (Chen, LoadSim Client 26 of Fig. 2, C8: L29-36 and C17: L8-26);

- At the monitoring location, monitoring responses received from the server system to the first and second request messages (Chen, C14: L23-31 and C17: L39-43); and
- Whereby user access to the server system as experienced by users local to the first and second network access locations is monitored without the need for monitoring components local to the first and second network access locations (Chen, C3: L60-63, C4: L31-43 and C8: L29-42).

However, Chen does not explicitly teach that transmitting a first and second requests over a first and second communication links from the monitoring location to a first and second network access locations that are remote from the monitoring location for transmission on the network at the first and second network access locations, to thereby simulate access to the server system by a user who is local to the first and second network access locations.

In the related art, Boss teaches a system that monitors the performance of Internet connections (Boss, C18: L60-67 and C19: L1-17) comprising:

- A first computer connected to the Internet (monitoring location, i.e., user experience monitoring system server – “UserMon” server);
- A second computer (first network access location, i.e., first data-gathering client) that receives from the first computer (UserMon) information identifying a target site to access the target site (first request) via first local dial-up connection (first communication link), the second computer obtaining a first performance-parameter value (first response) of an

Internet connection between the second computer and the target site, the second computer transmitting the first performance-parameter value to the first computer via the Internet;

- A third computer (second network access location, i.e., second data-gathering client) that receives from the first computer (UserMon) information identifying a target site to access the target site (second request) via second local dial-up connection (second communication link), the third computer obtaining a second performance-parameter value (second response) of an Internet connection between the third computer and the target site, the third computer transmitting the second performance-parameter value to the first computer via the Internet (Boss, C18: L60-67 and C19: L1-17).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teachings of Chen and Boss to have included the step of transmitting a first and second requests over a first and second communication links from the monitoring location to a first and second network access locations that are remote from the monitoring location for transmission on the network at the first and second network access locations, to thereby simulate access to the server system by a user who is local to the first and second network access locations because it would provide a way of simulating users/clients making separate Internet connections to the server from all over the distributed communications network in order to assess/obtain server

performance (i.e., to determine the response time, the max number of clients that a given server can adequately support, etc...) with a simulated client load and minimal hardware requirements (Chen, C3: L60-67 and C4: L1-10).

5. As to claims 2-3, Chen-Boss teaches the method as in claim 1, wherein monitoring responses received from the server system comprises the performance-parameter values indicative of a user's experience at the data-gathering client (network access point) accessing the site and the performance-parameter values include full-page download time (calculated response time) and full-page size (Boss, C6: L15-19).

6. As to claim 4, Chen-Boss teaches the method as in claim 2, wherein the network is the Internet, and the first and second communications links are connection-oriented links (first and second local dial-up connections) that directly connect the monitoring location (first computer, i.e., UserMon system) to the first and second network access locations (second and third computers, i.e., data-gathering clients), respectively (Boss, C18: L60-65 and C19: L5-8).

7. As to claim 5, Chen-Boss teaches the method as in claim 4, wherein the first and second communications links are Asynchronous Transfer Mode (ATM over fiber optic connections) links (Boss, C18: L46-50).

8. As to claim 6, Chen-Boss teaches the method as in claim 4, wherein the server system comprises a web server of a publicly accessible web site (target book store web site, Boss, C15: L34-43).

9. As to claim 7, Chen-Boss teaches the method as in claim 1, wherein the first and second communications links are connection-oriented links (first and second local dial-up connections) that directly interconnect the data center (UserMon) with the first and second network access locations (second and third computers, i.e., data-gathering clients), respectively (Boss, C18: L60-65 and C19: L5-8).

10. As to claim 8, Chen-Boss teaches the method as in claim 7, wherein the first and second communications links are Asynchronous Transfer Mode (ATM over fiber optic connections) links (Boss, C18: L46-50).

11. As to claim 9, Chen-Boss teaches the method as in claim 8, wherein the network is the Internet (Boss, C18: L24-35).

12. As to claims 10-11, Chen-Boss teaches the method as in claim 1, wherein transferring the first request message over the first communications link to a router or a modem that is directly connected to the network (Boss, C18: L16-35).

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13. Claims 12-22 are corresponding system claims of claims 1-5, 7, 10; therefore, they are rejected under the same rationale (Boss, Figs. 4, 13 and corresponding text).

14. Claims 23-29 are corresponding method claims of claims 1-7; therefore, they are rejected under the same rationale.

15. Claims 30-36 are corresponding system claims of claims 1-5, 7, 10; therefore, they are rejected under the same rationale.

16. Further references of interest are cited on Form PTO-892, which is an attachment to this office action.



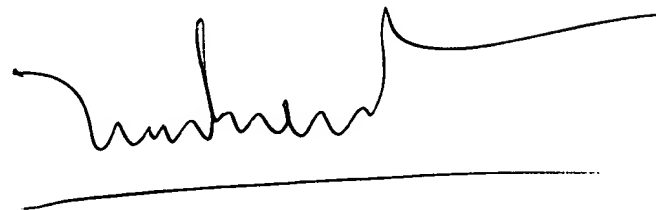
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17. A shortened statutory period for reply to this action is set to expire THREE (3) months from the mailing date of this communication. See 37 CFR 1.134.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang N. Nguyen whose telephone number is (703) 305-8190.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Le H. Luu, can be reached at (703) 305-9650. The fax phone numbers for the organization is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800/4700.

A handwritten signature in black ink, appearing to read 'Le Hien Luu', with a long horizontal line extending to the right.

LE HIEN LUU  
PRIMARY EXAMINER

Quang N. Nguyen